



EX PARTE OR LATE FILED

DOCKET FILE COPY ORIGINAL

March 11, 1996

BY HAND

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222 -- Mail Stop 1170
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

MAR 11 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Ex Parte Communication In
WT Docket No. 94-54

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's Rules, I am filing the original and one copy of this letter to report an oral ex parte communication in the above referenced proceeding. Last Thursday afternoon, March 7, 1996, on behalf of the Personal Communications Industry Association (PCIA), Mark Golden and Rob Cohen met with Barbara Esbin of the Commercial Wireless Division to discuss the referenced proceeding. Joining the PCIA representatives on behalf of Pacific Bell Mobile Services were Betsy S. Granger, Gina Harrison and Steve Aspell. The meeting discussion focussed on roaming issues potentially affected by the docket. Attached are copies of documents that were distributed at the meeting.

Due to delays in returning to PCIA's office after the afternoon meeting, this filing is not being made the day of the meeting. Please call me if you have any questions regarding this notice.

Respectfully submitted,


Robert L. Hoggarth
Director, Regulatory Relations

No. of Copies rec'd
List ABCDE

0+1

PCS Roaming: *Critical to the Success of CMRS Competition.*

As the FCC has recognized, the ability of mobile CMRS services to "roam" is of critical importance to a "competitive CMRS marketplace". *Second Notice of Proposed Rulemaking*, 60 Fed Reg. 20949 Paras. 54, 58 (April 28, 1995). However, the Commission has neglected to *require* cellular companies to provide roaming capabilities for PCS providers -- opting, instead, to rely on "marketplace forces" and to "monitor the development of roaming service and to police actively any denials of reasonable requests for roaming agreements". *Id.* at Para. 58. PCIA has become convinced by the record in the *Second Notice* and by marketplace developments that it is crucial for the Commission to require PCS-to-cellular roaming on the same basis as the Commission requires cellular-to-cellular roaming.

Background.

Historically, the FCC has required cellular companies to allow cellular-to-cellular roaming. In fact, that policy is now reflected in the agency's rules: "[c]ellular system licensees must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing, including roamers, while such subscribers are located within any portion of the authorized cellular geographic service area . . . where facilities have been constructed and service to subscribers has commenced." 47 C.F.R. 22.901.

Accordingly, it is simply not true, as suggested by some parties,¹ that cellular roaming appeared solely through market forces without FCC involvement.

While the FCC so far has declined to adopt similar rules for PCS-to-cellular roaming, the Commission has nonetheless recognized the pivotal role that roaming will play in the acceptance and success of PCS.

In fact, in its *Second Notice* the Commission stated that "[r]oaming capability is an increasingly important feature of mobile telephone communications" -- one that the Commission "should take any steps necessary to support". Para. 54.

What's the Market Incentive of Incumbent Cellular Providers?

In tentatively declining to require cellular companies to offer PCS roaming, the FCC appears to believe that market incentives will ensure that

cellular incumbents will provide roaming capabilities to PCS systems -- a view shared by a number of cellular incumbents themselves.

"Each cellular operator may find it to be economically beneficial to deny roaming or to charge higher prices for roaming in certain cellular MSAs to make PCS less desirable to consumers who place a high value on roaming."

-- Dr. Jerry A. Hausman,
McDonald Professor of Economics, MIT.

But exactly what this incentive will be is not clear. As BellSouth says, cellular incumbents already enjoy the benefits of an "existing nationwide seamless cellular roaming system".² Whatever incentive cellular companies had to permit cellular-to-cellular roaming (encouraged, of course, by a functional FCC requirement), they gain nothing more from providing this same roaming system to potential PCS competitors.

Lack of PCS Roaming Capability Provides Incumbent Cellular Companies with a Marketing Pitch -- Not an Incentive to Permit PCS Roaming.

Whatever economic theories can be presented regarding cellular companies' incentives, the best proof of the real incentives can be found in cellular companies' behavior when confronted with actual competition from PCS operators. That behavior is not encouraging to the development of CMRS competition.

The recent introduction of PCS competition in the Washington/Baltimore market has been accompanied by substantial advertising campaigns -- both by the nascent PCS provider and by incumbent cellular providers. The PCS provider's advertising invariably talks about price, additional telecommunications features and signal clarity.

However, virtually without exception, advertising by incumbent cellular providers focuses almost exclusively on the lack of roaming capability by PCS operators.

Clearly, while incumbent cellular providers may offer economic theories about how "foregone profit opportunities" will ensure that PCS providers get roaming capabilities, the behavior of those cellular providers in the market is quite different. As Dr. Jerry A. Hausman, McDonald Professor

"How [do] Sprint Spectrum wireless users make calls outside the greater Washington/Baltimore area[?] It's simple, if they have a quarter. Because once they leave Sprint's very limited service area, their wireless phone can't make a call."

-- Bell Atlantic NYNEX Ad,
Washington Post, 12/19/95

of Economics at MIT, stated in this proceeding, theories about "foregone profit opportunities" fail "to consider the increase in revenue that a cellular provider would gain in a region if PCS is made less attractive by its inability to provide out of region roaming services".³ Whatever incumbent cellular companies may be telling the FCC, their behavior in the marketplace tells a quite different story.

PCS-to-Cellular Roaming Is Technically Feasible and Can Be Implemented Without Imposing a Burden on Cellular Incumbents.

One of the apparent fears of requiring PCS-to-cellular roaming is that cellular companies (and ultimately users) will wind up footing the bill to implement technical features for the benefit of PCS. But this need not be the case at all. Both Pacific Bell Mobile Services and APC have proposed roaming requirements which put the burden on PCS operators. Under these plans, PCS operators will bear the burden of distributing dual-mode, dual frequency handsets -- due to become available in the second quarter of 1996 -- to PCS customers. Calls made on such handsets will appear no different to the cellular network from any other cellular call. Accordingly, handling those calls will require no additional equipment investment and should impose no costs for the incumbent cellular provider beyond those imposed by cellular roaming agreements.

Section 22.901 Alone Does Not Appear to Be the Answer.

Some parties contend that Section 22.901 is "sufficiently broad to foster PCS roaming services without imposing undue costs upon the CMRS

industry". Yet, it is not apparent at all from the face of Section 22.901, which deals with cellular customers, that the rule will offer protection from failure of cellular companies to offer roaming to PCS customers. As Bell South has already noted, a PCS customer, even one with a dual-mode phone, is simply not a "cellular customer in good standing".⁴ Accordingly, if the Commission's policy to promote competition in the mobile voice marketplace is to be realized, it must affirmatively state that the roaming policy embodied in Section 22.901 is intended to apply to PCS providers and customers.

What Is the Answer?

As the FCC has recognized, roaming capabilities are critical to the development not only of PCS but of the mobile "network or networks" envisioned by the Commission. The mounting evidence of the marketplace illustrates that incumbent cellular providers have the incentive and ability to deny PCS operators

roaming capabilities. Accordingly, PCIA believes that the FCC should simply require that incumbent cellular operators offer roaming capabilities to PCS operators on a non-discriminatory basis. In essence, PCIA asks that the Commission apply its long-standing cellular-to-cellular roaming policy to PCS providers.

Such a policy would not impose additional costs on the cellular industry. It would not require the technically impossible of cellular incumbents. As in the cellular industry, it would not require a heavy regulatory hand in private negotiations. But most fundamentally, it would help fulfill the competitive promise offered by PCS providers.

1. *Comments of BellSouth* at 5.
2. *Comments of BellSouth* at 5.
3. *Ex Parte* Affidavit filed by Pacific Telesis Mobile Services and Pacific Bell Mobile Services at 7-8.
4. *Comments of BellSouth* at 5.

**THE COMMISSION SHOULD ADOPT A
ROAMING RULE.**

Pacific Bell Mobile Services
March, 1996

A Broad Roaming Policy Should Be Adopted.

- The existing rule 22.901 should be extended to PCS providers.
- In addition, the Commission should mandate that roaming be made available on fair and nondiscriminatory terms and conditions.
- This is consistent with Sections 201 and 202 of the Communications Act.

The Telecommunications Act of 1996 Supports Commission Action on Roaming.

- Section 251(a) “Each telecommunications carrier has the duty --
- (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers;....’
- But without a clear statement with a respect to the roaming obligation, carriers may be forced to resort to a Section 208 complaint.

Seamless Roaming Is What Customers Want.

- Seamless roaming (the ability to place and receive calls outside of the home territory without having to dial extra digits) is the ubiquity that makes a service competitive.
- Seamless roaming does not include the ability to hand-off a call in progress to a different provider when a customer leaves the home territory. That would require a physical interconnection.

Seamless Roaming Is What Customers Want

- Seamless roaming requires a roaming contract to be in place.
- The contract must contain the terms and conditions to compensate each other for network usage.
- It must also state what signaling protocol will be used to exchange messages between the home location register and the visited location register.

Seamless Roaming Is What Customers Want.

- In the absence of a roaming contract, a roamer can only originate calls by providing a credit card number. He cannot receive calls.
- A rule to support seamless roaming will not place a financial burden on cellular providers.
- PCS providers will incur the costs to resolve any technical issues surrounding use of a dual-mode, dual-band handset to support cross-technology roaming.

Conclusion

- The Commission should support seamless roaming by adopting a rule on roaming.
- Without a rule on roaming, PCS providers will have difficulty providing the ubiquity customers desire, and cellular providers will maintain a competitive advantage.